

AB 1933: Frequently Asked Questions

I. INTRODUCTION

Q1: What is AB 1933?

Assembly Bill 1933 ("AB 1933") allows a foster child to remain in his/her school of origin for as long as the child is in foster care, if it is in the child's best interests. This means the foster child can remain in his/her school of origin and/or school feeder pattern even if:

- The child changes school levels, or
- The child moves out of the school area or district while in foster care.

If the foster child's case is closed prior to the end of an academic year, the foster child must be allowed to continue to attend the school of origin through the "duration of the academic school year." *Cal. Ed. Code § 48853.5(d)(2)*.

This bill was signed into law on September 30, 2010 and amended Section 48853.5 of the California Education Code.

Q2: What problem does AB 1933 seek to address?

California's foster children are often bounced from placement to placement and from school to school. These transitions typically result in education-related problems, including a loss of school credits, a loss in education attainment, and a delay in earning a high school diploma. Studies show that high school students who change schools even once are less than 50 percent as likely to graduate from high school as those students who do not change schools.

For many foster children who experience home placement transience, school may be the only place where they can count on seeing a familiar face and maintain some semblance of social stability.¹

Q3: To whom does AB 1933 apply?

AB 1933 applies to foster children. Generally, a foster child is a child who has been legally removed from his/her home or is the subject of a judicial petition to be legally removed from his/her home.

The Education Code defines a foster child as a child who:

"has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the

¹ See Rumberger, R.W., Larson, K.A., Ream, R.K., & Palardy, G.J. (1999). "The educational consequences of mobility for California students and schools." Policy Analysis for California Education, University of California at Berkeley.

subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.” *Cal. Ed. Code § 48853.5(a)*.

Q4: What is the definition of “school of origin”?

A foster child’s school of origin can either be the school that the foster child attended when he/she was permanently housed or the school in which the foster child was last enrolled while in foster care. If there is another school that the foster child is connected to and attended in the last 15 months, that school may also be deemed the school of origin. *Cal. Ed. Code § 48853.5(e)*.

II. PRACTICAL APPLICATION OF AB 1933

a. Role of the Educational Liaison

Q5: Who must help facilitate the provisions of AB 1933?

Each school district must designate a staff person as the educational liaison for foster children. In school districts that operate a foster children services program, the educational liaison shall be affiliated with the local foster children services program.

The educational liaison must help facilitate the provisions of AB 1933 and ensure the foster child is allowed to attend his/her school of origin. Additionally, the educational liaison must ensure and facilitate the proper educational placement, enrollment in school, and checkout from school.

The educational liaison must also assist foster child—when transferring from one school to another or from one school district to another—in ensuring proper transfer of credits, records, and grades. *Cal. Ed. Code § 48853.5(b)*.

b. Determining the School of Origin

Q6: What if the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled?

If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, then the educational liaison, in consultation with the educational rights holder, shall determine, in the best interests of the foster child, the school that shall be deemed the school of origin. *Cal. Ed. Code § 48853.5(e)*.

Q7: What if a foster child wants to go back to a school that is NEITHER the school he/she attended when permanently housed NOR the school in which he/she was last enrolled?

If there is some other school that the foster child attended, in the last 15 months, “with which the foster child is connected” then the liaison, in consultation with and the agreement of the foster child and the educational rights holder, shall determine, in the best interests of the foster child, the school that shall be deemed the school of origin. *Cal. Ed. Code § 48853.5(e)*.

Q8: What if a foster child attending elementary or middle school experiences a change in home placement and wants to continue on to the middle or high school attended by his/her peers?

To ensure that the foster child has the benefit of matriculating with his/her peers in accordance with the established feeder patterns of school districts, AB 1933 allows children transitioning between school grade levels to continue in the school district of origin in the same attendance area.

Likewise, if the child is transitioning to a middle school or high school and the school designated for matriculation is in ANOTHER school district, the child is allowed to attend the school designated for matriculation in that school district. *Cal Ed. Code § 48853.5(d)(3)*.

c. Transportation To and From the School of Origin

Q9: Who is required to transport the foster child to/from the school of origin?

Under federal law, the cost of reasonable travel for the child to remain in the school of origin is an allowable foster care maintenance cost. *42 U.S.C. § 365*. The Department of Children and Family Services is therefore required to reimburse foster parents, caregivers, or otherwise provide funding for the reasonable costs of providing transportation to and from the school of origin.

If a foster child needs funding for transportation to the school of origin, ask the child's social worker to provide the funding. If the child's social worker does not provide the funding, ask the child's dependency attorney and/or the Court to order the County to provide the funding. See form, "Order to Provide Reasonable Cost of Educational Travel."

Additionally, school districts, at their discretion, may provide transportation services themselves to allow the foster child to attend the school of origin. *Cal. Ed. Code § 48853.5(d)(4)*. The school district and the Department of Children and Family Services are encouraged to collaborate to ensure maximum use of available federal money. *Cal. Ed. Code § 48853.5(d)(9)*.

If a foster child is receiving special education and the placement change is within that same district, the school district must provide transportation to and from the school of origin, if the Individualized Education Program provides for such transportation. *Cal. Ed. Code § 41850(d)*. Otherwise, if the child is in special education, questions regarding transportation should be addressed in the Individualized Education Program team meeting.

d. Disputes

Q10: What if the educational liaison and the education rights holder disagree regarding the "best interests" of the foster child?

The education rights holder has the ultimate decision-making authority. The educational liaison's role is advisory only and does NOT supersede the authority granted under state and federal law to an education rights holder. The education rights holder can be a parent or guardian retaining educational rights, a responsible adult appointed by the court to represent the child pursuant to Section 361 or 726 of the Welfare and Institutions Code, a surrogate parent, or a foster parent exercising the authority granted under Section 56055.

Again, the role of the educational liaison is advisory with respect to placement decisions and determination of school of origin. *Cal Ed. Code § 48853.5(b)(c)*.

Q11: What if the school district and/or school of origin do not agree that the foster child is eligible to continue to attend the school of origin?

If there is any dispute about the request of a foster child to remain in the school of origin, "the foster child has the right to remain in the school of origin pending resolution of the dispute." *Cal Ed. Code § 48853.5(d)(8)*.

The dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil served by the local agency.

Q12: What if the foster child's social worker says the school of origin is too far to attend?

The social worker does not have a right to make that decision; only the education right holder is authorized to make this decision. If the foster child's social worker says the school of origin is too far to attend despite the education rights holder and the child's wishes, the foster child should contact his/her dependency attorney and request that they make an order regarding the right to attend the school of origin.

Q13: What if the child's foster parent, group home, or other caregiver says the school of origin is too far to attend?

If the foster parent is not the education rights holder, the foster parent does not have a right to make that decision. The foster child should contact his/her dependency attorney.

Group home staff are prohibited from being education rights holders, so they do not have a right to make that decision. The foster child should contact his/her dependency attorney.

If the foster parent is the education rights holder, then the foster parent does have a right to make a decision regarding whether attending the school of origin is in the child's best interests.

However, if the foster parent is not acting in the child's best interests, the foster child should contact his/her dependency attorney and can ask that attorney to appoint another education rights holder or make an order regarding attendance and transportation to the school of origin.

Q14: What if the child's foster parent, group home, or other caregiver will not provide transportation to the school of origin?

The foster parent and group home (and other federally funded caregivers) are required to transport the child to school. If the foster parent refuses to do so, the foster child should contact the dependency attorney to resolve the issue.

e. No Disruption in Attendance

Q15: Can a school district require a foster child to provide additional documentation to remain in or enroll in the school of origin?

A school CANNOT interrupt, inhibit, or in any way disrupt a foster child's continued attendance at the school of origin by requiring the completion of any documentation whatsoever.

For recordkeeping purposes only, the educational rights holder of a foster child who is already enrolled and attending the school of origin may later be asked to fill out a form or document reflecting that the child is outside of the traditional attendance area.

f. The Right to Attend the School of Origin and Choosing A School Other Than The School of Origin

Q16: Can the right to attend the school of origin be waived?

The education rights holder in consultation with and the agreement of the foster child may decide that the foster child should attend a school other than the school of origin, because it is in the best interests of the foster child to do so.

The educational liaison, in consultation with and the agreement of the foster child and the education rights holder, may also recommend that the foster child attend a school other than the school of origin, if it is in the foster child's best interests. *Cal Ed. Code § 48853.5(d)(5)*.

Prior to making any recommendation to move a foster child from his/her school of origin, the liaison must provide the foster child and the education rights holder with a written explanation stating the basis for the recommendation and how this recommendation serves the foster child's best interests. *Cal Ed. Code § 48853.5(d)(6)*.

The education rights holder may disagree with the education liaison's recommendation, and the decision regarding whether the child should attend a school other than the school of origin remains with the education rights holder.

Q17: If it is determined that the foster children will attend a school other than the school of origin, what school may the foster child attend?

The foster child may enroll in any public school that other students living in the attendance area in which the foster child resides are eligible to attend. *Cal Ed. Code § 48853.5(d)(5)*.

Q18: If a foster child decides not to attend the school of origin, what is required for him/her to enroll at the new school?

The foster child must be immediately enrolled in the new school, even if the foster child has outstanding fees, fines, textbooks, or other items or moneys due to the school last attended or is unable to produce records or clothing normally required for enrollment. This includes, for example, previous academic records, medical records, proof of residency, other documentation, or school uniforms. *Cal Ed. Code § 48853.5(d)(7)(A-C)*.

The educational liaison for the new school must, within two business days of the foster child's request for enrollment, contact the school last attended by the foster child to obtain all academic and other records. All required records must be provided to the new school regardless of any outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended. The educational liaison for the school last attended must provide all records to the new school within two business days of receiving the request.

Q19: What if the foster child or educational rights holder wishes to return to the school of origin?

The school of origin includes any school in which a foster child was enrolled within the last 15 months and has a connection. *Cal. Ed. Code § 48853.5(e)*. As such, within 15 months of the decision to enroll in the new school, the prior school should allow the child to reenroll.

Q20: What if the foster child (or education rights holder) did not know he/she had a right to attend the school of origin?

If the foster child (or education rights holder) did not know he/she had the right to attend the school of origin, the foster child should still have the right to attend the school of origin upon learning that he/she has that right.

g. Foster Children in Our Juvenile Justice System

Q21: Which children in our juvenile justice system are considered foster children?

A child in the juvenile justice system is a foster child if the child has been made a ward of the court under Welfare and Institutions Code Section 602 and the court has ordered that he/she be placed in one of the following:

- 1) the approved home of a relative;
- 2) the approved home of a nonrelative, extended family member, which is defined as "any adult caregiver who has an established familial or mentoring relationship" with the child, which "may include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends" *Cal. Welf. & Inst. Code 362.7*;
- 3) a suitable licensed community care facility (frequently referred to as a "group home"); or
- 4) a suitable licensed foster family home or certified family home (frequently referred to as a "foster home").
Cal. Welf. & Inst. Code 727.

The court order placing a child into one of these options is commonly referred to as a “suitable placement order.”

Q22: If a foster child is detained in juvenile hall, does the juvenile court school become the school of origin?

As long as the child is detained for 15 months or less, either the juvenile court school or the school the foster child was enrolled in before detention in juvenile court may be deemed the school of origin. *Cal. Ed. Code § 48853.5(e)*.

Q23: If a child is already enrolled in a juvenile court school at the time of placement into foster care, is the school of origin the juvenile court school or the school the child was enrolled in before juvenile hall detention?

Either the juvenile court school or the school the child was enrolled in before juvenile court school—if the child has been detained for 15 months or less—may be deemed the school of origin. *Cal. Ed. Code § 48853.5(e)*.

h. Special Education Foster Children

Q24: What happens if a foster child receiving special education has an Individualized Education Program (IEP) that calls for the child to attend a certain school and/or provides transportation for a child to attend a certain school, and then the child is placed outside of that school district?

Under AB 1933, the foster child still has a right to attend the school listed in the IEP, which is her school of origin, if it is in her best interest. Under AB 1933, the district of origin would still need to pay for the costs of attendance at the school of origin, even if that school is a non-public school.

However, special education laws apply regarding whether the district of origin will need to pay for and provide transportation to the school of origin. Transportation shall be provided to the student if special education law or another federal law require it (*see Cal. Ed. Code. § 48853.5(4) and (10)*). If they do not require it, the student will need to ask the social worker, dependency attorney or court to provide the funding for transportation under the Title IVe foster care maintenance costs (*see question 9*).

In any event, AB 1933 does not “supersede or exceed” laws governing special education services for foster children; therefore, discussions regarding transportation for special education students and whether it is required should take place in an IEP meeting. *Cal. Ed. Code § 48853.5(10)*.

Because special education law is a specialized area, if you have specific questions please contact Public Counsel or your local bar association to find an attorney specializing in this area. You can also contact the dependency attorney for referrals or, in Los Angeles, request a 317(e) referral to the education attorney panel. In addition, you can contact the California

Department of Education's Special Education Procedural Safeguards office at 1-800-926-0648. They are open from 9 a.m. to 4 p.m.